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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/010,689	11/08/2001	Daniel Perlman	073442-4701	7076

7590

09/04/2003

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EXAMINER

TOOMER, CEPHIA D

ART UNIT

PAPER NUMBER

1714

DATE MAILED: 09/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/010,689	PERLMAN, DANIEL	
	<b>Examiner</b>	<b>Art Unit</b>	
	Cephia D. Toomer	1714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 June 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-27,30,34 and 36-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-27,30,34 and 36-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_                      6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This Office action is in response to the amendment filed June 10, 2003 in which claims 1, 28, 29, 33 and 35 were canceled, claims 2-27 and 30-31 were amended and claim 38-40 were added.

#### ***Response to Amendment***

1. The rejection of the claims under 35 USC 112, second paragraph is withdrawn in view of the amendment to the claims.
2. The 103 rejection of the claims over CVS.com is withdrawn in view of Applicant canceling claims 1, 28 and 29.
3. The 102 rejection of the claims over JP 62020594 is withdrawn in view of Applicant canceling claims 1, 28 and 29.

#### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 39 and 40 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed,

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had possession of the claimed invention. There is no support in the specification for a container that is a canister.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 5, 6, 3, 391 and 40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 5, there is no antecedent support for "further consist" because claim 39 uses the transition language "comprising".

In claim 6, there is no antecedent support for "said principal alcohol".

Claim 31 is rejected because it is a dependent of two statutory classes of invention.

In claim 39, line 12, the period following "combustion" should be deleted.

In claim 40, line 13, the period following "combustion" should be deleted.

### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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9. Claims 2-15, 17-22, 25-27, 30-34, and 36-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perlman (US 5,858,031) in view of JP 62020594 (translation).

Perlman teaches an alcoholic gel fuel comprising 10-30% water, 24-83 % ethanol, 7-60% isopropanol and 1-1.5% hydroxypropylcellulose thickener (see abstract; col. 3, lines 41-47). Perlman teaches that the fuel is an open reservoir (cup, dish, etc) and may be used to place beneath charcoal to ignite the charcoal (see col. 4, lines 2-5, 20-34). Perlman uses a cup that is 3.3 cm x 0.8cm diameter (see examples). Perlman teaches the limitations of the claims other than the differences that are discussed below.

In the first aspect, Perlman differs from the claims in that he does not specifically teach that the cup is a plastic cup (claims 39 and 40). However, JP teaches this difference.

JP teaches a portable fuel briquette obtained by filling a polyethylene cup with an alcoholic gel fuel (see summary of invention and examples). The cup is sealed with a plastic film (see approach of the invention).

It would have been obvious to one of ordinary skill in the art to have used the plastic cup of JP to contain the fuel composition of the claims because Perlman teaches that the alcoholic fuel of his invention is contained in a cup and JP teaches that alcoholic fuels are contained in plastic cups.

In the second aspect, Perlman differs from the claims in that he does not teach specifically teach the amount of alcoholic fuel present in the container (claims 3 and 4). However, it would have been obvious to one of ordinary skill in the art to have optimized

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the amount in the cup because the amount of fuel present in the cup is a result effective variable, i.e., the length of time that one desires for the fuel to burn would determine the amount of alcoholic fuel in the cup.

In the third aspect, Perlman differs from the claims in that he does not specifically teach the dimensions of the cup. However, no unobviousness is seen in this difference because the size of the cup is merely a design choice and the size of the cup is not patentable, in and of itself.

In the fourth aspect, Perlman differs from the claims in that he does not specifically teach that a bittering agent is added to the fuel. However, it is known the world over that bittering agents are added to ethanol to discourage human consumption of the ethanol. Also, the isopropanol that is in Perlman may function as a bittering agent.

In the fifth aspect, Perlman differs from the claims in that he does not teach the amount of charcoal that is used or that instructions come with the alcoholic fuel and charcoal. However, it would have been obvious to one of ordinary skill in the art in the art to have optimized the amount of charcoal because the amount is a result effective variable. The amount of charcoal would be determined by the amount or thickness of the food that is to be cooked. With respect to the alcoholic fuel and charcoal coming with instruction, it is well known that lighter fluids and charcoal come with instructions. Therefore, it would have been obvious to one of ordinary skill in the art to have included these instructions with the combination of fuel and charcoal.

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Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Perlman and JP 62020594 as applied to claims above, and further in view of Tarpley (US 4,157,242).

Perlman and JP have been discussed above. Perlman fails to teach the thickener used to form the alcoholic gel of its invention. However, Tarpley teaches this difference.

Tarpley teaches that liquid fuels such as alcohols are thickened with about 1-10 wt % of thickeners that include hydroxypropyl cellulose, carrageenan and other natural and synthetic gums (see col. 7, lines 25-40; col. 8, line 1-11).

It would have been obvious to one of ordinary skill in the art to have selected the claimed thickeners to thicken the alcoholic fuel of Perlman because Tarpley teaches that the claimed thickeners and the hydroxypropyl cellulose thickener of Perlman are art-recognized equivalents.

Claims 16 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perlman and JP 62020594 as applied to claims above, and further in view of GB 2281915.

Perlman and JP have been discussed above. Perlman fails to teach the viscosity of his fuel composition or the thickener used to prepare the alcoholic gel fuel of its invention. However, GB teaches this difference.

GB teaches an alcoholic gel fuel that is thickened to a consistency of from 100 to 500 poise with fumed silica gel ( see abstract; page 3, lines 2-6).

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It would have been obvious to one of ordinary skill in the art to have selected silica gel as the thickener and to have thickened the fuel composition to the claimed consistency because GB teaches that silica gel does not have any combustion products and that there "is no possibility of any component thereof reacting, during burning to form undesirable side products" (see page 7, lines 2-9).

10. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Perlman and JP62020594 as applied to claims above, and further in view of BR 9002455.

BR teaches a alcoholic fuel that is thickened with a polyacrylic copolymer (see abstract in its entirety).

It would have been obvious to one of ordinary skill in the art to have used the polyacrylic copolymer as the thickener because Perlman teaches that a variety of thickening agents may be used that are known to the skilled artisan and BR teaches such a conventional polyacrylic copolymer thickener in an alcoholic fuel.

11. Applicant's arguments have been fully considered but they are not persuasive.

12. Applicant argues that the present invention is free of inorganic materials such as those disclosed in JP and that the container and fuel of the present invention is completely consumed during combustion.

It is well settled that the claim language "comprising" is open-ended claim language and opens the claims to unrecited components.

With respect to the container of JP not burning, Applicant's attention is directed to JP's approach of the invention. JP recites that "the container barely generates odor



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while burning.” JP teaches that the container is more stable and therefore does not deform but burns at a constant rate thus allowing the fuel to burn stable and constant.

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

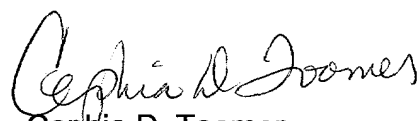
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cephia D. Toomer whose telephone number is 703-308-2509. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on 703-306-2777. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

A handwritten signature in cursive script, reading "Cepha D. Toomer".

Cepha D. Toomer  
Primary Examiner  
Art Unit 1714

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cdt